

Clean Air Campaign Inc., Open Rivers Project, 307 7th Ave. NY NY 10001, 212/582-2578

November 19, 2015

Dr. Christopher Mallery  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers, NY District  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090

Re: Public Notice No. NAN-1998-00290,  
Issued 10/5/15, "Pier 54"/Pier 55/Diller  
Island in lower Hudson River off Manhattan

By email

Dear Dr. Mallery,

Clean Air Campaign Inc. and its Open Rivers Project oppose any permit or other authorization for the "Pier 54"/Pier 55/Diller Island project. We urge the Corps to deny the authorization that the Hudson River Park Trust (HRPT, a State public authority) has requested for this totally new project in open, undeveloped waters of the Hudson River under permit No. NAN-1998-00290.

That permit ("the Big Permit")--an illegal hybrid between an individual and a general permit under Sec. 404 of the federal Clean Water Act (CWA) and Sec. 10 of the Rivers and Harbors Act of 1899--was issued to HRPT on 5/31/2000 (more than 15 years ago) for work throughout a vast, environmentally critical 490-acre habitat in the Hudson River that includes (but is far larger than) the site of the Pier 55 project. That Big Permit should be revoked.

**I. The world has changed since the Big Permit was issued.** The nearshore waters of the lower Hudson River off Manhattan ("the River" below) has been designated a #1 (highest risk) hurricane evacuation zone. Superstorm Sandy gave the Corps ample new evidence of the folly of siting HRPT's subsidized non-water-dependent projects in the River, where storm and hurricane damage are inevitable, and may be catastrophic. The terrorist attacks of 9/11 provided new evidence of the need to keep such navigable public waterways as the lower Hudson open for navigation and evacuation. And declining stocks of some of the valuable Atlantic Coast fisheries that depend on the River habitat provided urgent new reasons to preserve the physical integrity of the prime, productive, irreplaceable aquatic habitat in the River's nearshore waters.

**II. Even if the Big Permit were not illegal--which it is--it would be impermissible to use it to authorize Pier 55/Diller Island.**

The Corps' deeply flawed full 10-page Oct. 5, 2015 Public Notice (PN) says the Corps will consider comments "to determine whether to authorize [Pier 55/Diller Island] under the existing [5/31/2000 Big] permit." Among the many reasons why using the old Big Permit to authorize Pier 55/Diller Island would be completely unacceptable: that Big Permit No. 1998-00290 (NAN-1998-00290) stated clearly on p. 3 that "**All construction or work on** Pier 54 **'shall take place within the footprint of the existing pier'**"--that is, **old Pier 54**. (Emphasis added.) The new Pier 55 project is not a replacement for the old Pier 54 (as the 10/5/15 Corps PN misleadingly claimed). Nor would it be built in the footprint of old Pier 54, as was required under the terms of Permit No. 1998-00290 (now called NAN-1998-00290).

Clean Air Campaign (CAC) does not mean to imply that building non-water-dependent

performance space venues within the footprint of old Pier 54 in the River would be a better alternative than Pier 55. Both in-water locations for such misplaced non-water-dependent ventures are illegal and unacceptable.

**III. The Diller Island amphitheater and performance space venture is designed to accomodate 5,000 people at an island offshore. Two narrow gangways would connect this offshore island to the upland. Its in-water location would create unacceptable risks.**

The terrorist attacks that killed or injured over a hundred people at the Bataclan concert hall in Paris on 11/13/15 targeted a sold-out rock concert for 1,000 people. The Pier 55 amphitheater and performance space venture would be designed to accomodate five times as many people at the worst possible location--not only in a #1 (highest risk) hurricane evacuation zone in the River, in a part of the estuary where powerful winds, tides and currents go in every direction, but on an island in those waters connected to the upland by two narrow gangways. Rushing seriously wounded victims to hospitals in time to treat them saved lives in Paris. Diller Island would be very hard to evacuate quickly. Places where large numbers of people congregate for concerts and other performances are favored terrorist targets.

The risks from siting Diller Island (and other proposed non-water-dependent HRPT projects) in the River don't stop there. Some of the same language New York Governor Andrew Cuomo used in his 11/12/15 letter to the U.S. Maritime Administration disapproving a different offshore project (Port Ambrose) would also be applicable to the River. This location "presents inherent risks to security and commercial navigation," Gov. Cuomo wrote, and creates unacceptable risks from "increasingly extreme weather and the devastating effects it can cause."

Approving the Pier 55 amphitheater and performance space venture out in the River would create unacceptable risks to public safety that are completely unnecessary, since they can be avoided if the Corps denies the requested authorization.

**IV. Neither the Pier 55/Diller Island project nor the overall so-called "Hudson River Park" (HRP) project referred to in the 10/5/15 PN is a park (as the PN misleadingly calls them). Both are primarily real estate ventures proposed for an invaluable 490-acre marine and estuarine habitat in a navigable public waterway.**

The overall segmented, piecemealed project in 490 acres of the River that HRPT is planning, assembling, subsidizing, building, preparing for development, doing deals for, conferring tax and other subsidies on, and leasing out might more honestly be called a "mixed use offshore in-water real estate assemblage, site preparation, and development venture." The only terms the Corps should never use to describe the portion of the HRPT project in the River (including Pier 55/Diller Island) if the Corps wishes to invite relevant information from agencies, officials and the public are "Hudson River Park," "Hudson River State Park," or "the park."

The term "Hudson River park" or "the park" is defined in Sec. 3(e) of the NY State Hudson River Park Act of 1998 (HRP Act) to refer solely to a set of project area boundaries, and these boundaries surround 490 acres of the River between Battery Park City and W. 59th Street extended out to the U.S. Pierhead Line offshore, plus another 60 acres of green space on the upland along the River. Pier 55/Diller Island would be built near the middle of the huge 490-acre swath of the River

governed by the Corps' 5/31/2000 Big Permit.

**The 10/5/15 PN misleadingly** refers to the portion of the HRP project that spans 490 acres of the Hudson River as a "State Park." That term might well lead the general public to confuse this "park" with the 60-acre greenway on the upland along the River, or even with a park like Adirondack State Park upstate. The PN doesn't adequately explain that the stretch of the Hudson River the Corps PN is referring to is a navigable public waterway (i.e. it is **water**, not dry land); and that the 490 acres of the River under HRPT's jurisdiction constitute a unique and limited 490-acre marine and estuarine habitat for more than 100 species--much less disclose that this habitat is essential for sustaining valuable Atlantic Coast fisheries.

The in-water portion of the overall HRPT project was conceived as a phased development project, with HRPT serving as a vehicle to take in public and private funds from all possible sources; to spend that money not just on its own operations and outside legal and other consultants, but on building and rebuilding real estate development sites up and down the River; to confer real estate tax exemptions and other direct and indirect public subsidies on private entities in perpetuity; and to make deals with potential lessees and sub-lessees (whose principals and financial partners are increasingly wealthy, high-profile, politically connected insiders).

The Corps' 5/31/2000 Big Permit authorized hundreds of in-water and over-water project elements in what the Big Permit called Segments 3, 4, 5, 6 and 7 of the River--from more than 37 new and rebuilt piers to so-called historic vessels like the Intrepid. One of the many things that made this Big Permit illegal was that the ever-expanding "development plane" that HRPT was assembling over more and more acreage in the River was almost entirely being put together for non-water-dependent uses (that is, uses that don't need to be sited in the water).

The so-called Hudson River Park Trust (HRPT) is of course not a "trust" either, but a secretive, lavishly funded State public authority, with vast, unaccountable powers to subsidize site creation and development in the River. The genuine park on the upland at the River's edge is now virtually completed, with walkways and green open space next to a north-south bikeway. Unfortunately, HRPT has also built or rebuilt roughly 17 piers in the waters of the River itself over the last 15 years--a huge number of non-essential construction projects in a critical, unique and limited habitat area. That's in addition to the many other piecemealed fills and other structures the Corps has improperly authorized for HRPT and HRPT's lessees and other private and public partners over the same 15 years.

**V. Besides not being a "park," the portion of HRPT's overall project in 490 acres of priceless Hudson River waters is a single and complete project** (an in-water site creation, site preparation and real estate development project). The Corps must not consider the current Pier 55/Diller Island proposal in isolation. The new Pier 55 would be very close to Pier 57, for example, where HRPT is seeking the power to make a deal for a 99-year lease in order to facilitate non-water-dependent office space and other uses.

If the Corps keeps authorizing more and more work in and over the River, CAC and other groups believe that HRPT's numerous development sites in the River (project elements in HRPT's

overall project) will increasingly be connected, since real estate seeks "critical mass." The Corps must consider all the piecemealed fills and other structures, works and activities that HRPT and its lessees have previously placed in or over the River or may seek approvals for now or in the future together, including their cumulative impacts.

**VI. The stated "Activity" and "Location" on the Corps' PN are false and misleading. Pier 55 is a totally new project in and over the River's open undeveloped waters, not a "replacement of...Piers 54."**

The 10/5/15 PN claims that the "Activity:" is "Replacement of previously-authorized Piers [sic] 54, not-in-place, in a new configuration," and gives its "Location:" as "the foot of West 12th Street." The squib on the Corps website (and p. 4 of the full 10-page PN) add the phrase "between the locations of Pier 54 and Pier 56 in the Hudson River."

The **totally new Pier 55 project in and over the open undeveloped waters of the Hudson River** which the Corps is proposing to use the old Big Permit to authorize is **not** at the foot of W. 12th St., but in the nearshore waters at the foot of W. 13th St. It is the old Pier 54, not the new Pier 55, which is in the River at the foot of W. 12th St. Attorneys for the applicant, HRPT, are simply calling the completely new Pier 55 project "Pier 54" or a "replacement" in order to make an end-run around legal requirements.

The new Pier 55 project is often referred to as "Diller Island" because the approximately 2.7-acre main new structure offshore would be linked to the upland by gangways (called "accessway" or "access ramp" on unnumbered pages 7 and 8 of the 10-p. full PN), and would have additional structures underneath it and/or alongside it.

The project currently proposed for Corps authorization would also have a "support barge" mooring platform connected to it (PN pp. 4 and 7), allegedly for a "support barge" for "possible seasonal mooring." But a number of other "seasonal" structures initially authorized by the Corps have subsequently been given permanent status. Similarly, this platform and vessel are depicted in the PN as relatively small. But if the Corps authorizes the "Pier 54"/Pier55/Diller Island project under the terms of the 5/31/2000 Big Permit and its associated Programmatic Agreement (see PN p. 2), then who knows how many vast "historic vessels" might be permanently lodged in the River bottom next to Pier 55, the way the huge mothballed World War II aircraft carrier now billed as the Intrepid Sea-Air-Space Museum was.

The PN states that both Pier 54's and Pier 56's pile fields would remain in place, "except for the removal of approximately 25 pilings" from these two pile fields. "The remainder of the approximately six hundred (600) existing pilings would be retained." The PN describes a dizzying array of "approximate" numbers of new pilings of various types and dimensions to be added to the River to support the new Pier 55 and its accessways, barge mooring platform, protective fender clusters etc. (according to PN pp. 4-5 and 7-8). These new pilings would be **in addition to the "approximately...600 existing pilings"** that would remain in the River at Piers 54 and 56. That adds up to a very large number of pilings in a limited stretch of the River, just south of Pier 57, where even more pilings can be expected to be added to the River if the Corps allows the latest changes in non-water-dependent uses at Pier 57 to go forward as well.

The amphitheater and other performance venues, public restrooms and other fills/structures proposed for Diller Island would have to have sound stages and other heavy equipment trucked in for many performances. Those performances would be designed to attract up to 5,000 people out in the River offshore (some of whom might be conveyed to performances by some kind of vehicle). Thus the new pilings for a Pier 55/Diller Island venture would have to support heavier loads than the old pilings that were left in the River at old Pier 54 and ghost Pier 56 did.

The HRPT/Diller team apparently claimed to the Corps that something like 535 supporting pilings of varying dimensions and types would be sufficient for this purpose. The confusing numbers on pp. 4-5 of the PN don't quite add up. But many hundreds of concrete piles either 2 feet or 3 feet in diameter would be driven into the riverbed and filled with concrete. At least 128 "12-inch-diameter timber piles" and 24 "hollow 16-inch-diameter steel pipe piles" would be driven into the riverbed in addition to the thick pilings filled with concrete.

The environmentally critical 490-acre River habitat where this end-run around Corps permitting requirements is being attempted consists in part of more than 37 old, new and ghost "piers" which HRPT would like to have rebuilt for non-water-dependent uses, and other fills and "floating" and other structures that misuse the River. But the extraordinary national value of this prime marine and estuarine habitat for Atlantic Coast fisheries stems from the fact that much of this habitat still consists of **water**. The open undeveloped waters between the hundreds of large and small components of HRPT's overall piecemealed River real estate venture in this 490-acre habitat are priceless treasures. And even the water beneath the older piers provides habitat that can be used for fish migration and even benthic feeding and resting.

If the Corps allows this egregious example of a totally new Pier 55 project to proceed at one of the treasured open water locations between old Piers 54 and 56, the Corps will be establishing a precedent for filling **all of the open waters that remain in the irreplaceable 490-acre stretch of the River** governed by the old Big Permit with habitat-destroying, view-blocking, high-risk, misplaced fills and structures.

**VII. The federal Clean Water Act (CWA) and the regulatory framework that governs Corps authorizations for construction in and over the water are improperly described in the 10/5/15 PN, and in some Corps authorizations. The Corps is required to deny Sec. 404 CWA permits and other authorizations for projects like Pier 55/Diller Island when there are practicable upland alternatives, and/or when a project may have significant adverse aquatic impacts.**

Buried on p. 2 of the PN is the phrase "Reviews of activities pursuant to Section 404 of the Clean Water Act will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act..." In fact these 404(b)(1) Guidelines--regulations with the force of law--are not allowed to be lumped in with a jumble of other "public interest" factors (including those listed on p. 1 of the PN) when the Corps makes its decisions.

The Corps is required to adhere to two separate and independent standards under the

404(b)(1) regulations when deciding whether or not a permit or other authorization must be denied. Under the 404(b)(1) regulations, the Corps must deny the authorization if there are practicable alternatives to a proposed project "which would have less adverse impact on the aquatic ecosystem" (called the "practicable alternatives test,"), and/or if the project(s) might have significant adverse individual or **cumulative** effects on aquatic resources. The Corps cannot legally just jump over these hurdles and arbitrarily approve whatever applicants like HRPT or HRPT's lessees would like to do in the River on the basis that it would "not be contrary to the general public interest."

**A. The practicable alternatives test.**

There are a tremendous number of "practicable alternatives" to the Pier 55/Diller Island amphitheater and performance space venture at higher, dryer, safer upland locations, both nearby and in all five boroughs of New York City. A quick internet search brings up many hundreds of existing venues where billionaire entertainment mogul Barry Diller might book his shows. There are also many underutilized upland locations where any of the many entities controlled by Mr. Diller could build a totally new performance venue, or rehabilitate an old one (a shuttered movie theater, armory, church or other upland building, for example) if Mr. Diller or his partners wanted to do so. Some of these underutilized upland locations are even right across the West Side highway from the River. Others are closer to existing subways. The alternative of just not building the project at all is also practicable in this case.

**B. The significant adverse aquatic impacts test.**

Besides requiring denial of Sec. 404 CWA authorizations when there are practicable alternatives to a project that are less likely to harm aquatic resources, the 404(b)(1) regulations require that authorizations be denied if a project might cause or contribute to significant adverse individual or cumulative effects on aquatic life or "aquatic ecosystem diversity, productivity and stability...[including] loss of fish and wildlife habitat...." That is clearly the case with both the Pier 55/Diller Island project and HRPT's overall phased development project in 490 acres of the River.

The **PN does not clearly disclose** the fact that the actual Pier 55 amphitheater and performance space project would result in a **net increase in both the pilings, fills and structures, and in water coverage and shading in and over the River**, beyond what was there before. And this net increase would be bound to have significant cumulative adverse habitat and fisheries impacts, not only throughout the entire 490-acre habitat governed by the 5/31/2000 Big Permit the Corps issued to HRPT more than 15 years ago, but **wherever migratory fish and wildlife species that depend on the River habitat travel**--namely, off the shores of Long Island, New Jersey, Connecticut and Cape Cod, and far beyond.

**(1) Significant adverse impacts from the Pier 55/Diller Island's forests of new pilings would increase.**

**The claims in the 10/5/15 PN that the supporting piles or pile fields at Piers 54, 55 and 56 constitute "fishery habitat enhancement" or "fishery habitat" are false and misleading.** It is the water in the Hudson River and the living resources in it that constitute the fishery habitat--not the ever-multiplying thickets of old and new pilings that HRPT and its partners propose to leave or drive into the River.

The **PN's statement** on pp. 4-5 that "the flowable concrete to be placed inside [139 driven...hollow pipe piles] below the plane of Spring High Water...will be confined within the pipe piles and would not result in adverse impacts to Hudson River water quality or aquatic biota" is disingenuous. It **could mislead a casual reader into assuming that the piling structures themselves (not just the concrete within them) would not "result in adverse impacts."**

In fact, each of the new pilings would permanently eliminate habitat throughout the water column within which it would stand. These pilings would effectively replace portions of the river bottom with dry land, eliminating benthic food sources. They would increase the rate at which sediment accumulates (which can ultimately eliminate a prime open water habitat entirely, turning it into a development fill to support misplaced real estate development projects). These new pilings would impair the flow and circulation of waters and adversely alter or eliminate aquatic functions. Such pilings can also block fish migration, and more. The two-foot- and three-foot-thick new concrete pilings plus additional pilings required to support the heavy loads expected at Pier 55 if the Corps approves it would exacerbate all these adverse habitat impacts--not only within the Pier 54 through Pier 62 "development node," but beyond it.

In short, the **total number and dimensions of habitat-threatening pilings and obstructions to fish migration in the vicinity of Piers 54, 55 and 56 would be likely to increase adverse aquatic impacts significantly.**

(2) **Significant adverse impacts from Pier 55/Diller Island's increased water coverage and shading would also increase.** Increased water coverage and shading interfere with photosynthesis. While the illegal Big Permit did allow for "modifications" under some circumstances, federal agencies were only induced to drop their objections to the Big Permit after HRPT and their partners claimed there would be a net reduction in water coverage and shading over **the entire 490 acres of the River**--that is, in what the Corps' Big Permit referred to as "Segments 3, 4, 5, 6 and 7" of the whole 490 acres of the River, not just in Segment 5 (where Pier 55/Diller Island would be built).

HRPT and their attorneys have been playing a numbers game with federal and state agencies for decades, adding and subtracting acreage in ways that confuse and mislead. But that claim of a net reduction in water coverage and shading throughout this critical 490-acre habitat proved to be false long ago, even before HRPT proposed adding another 2.7-acre Pier 55/Diller Island project to the overall total.

The Corps' 5/31/2000 Big Permit stated that the deck on existing pier 54 measured approximately "490 feet by 60 feet" at that time (less than 1 acre of water covered), and now that HRPT has removed Pier 54's deck entirely, even more beneficial sunlight can reach the habitat (and promote photosynthesis) in the River at Pier 54 than it did before. Ghost Pier 56 had already had its deck removed before HRPT began trying to increase water coverage and shading over the River (while pretending to do the opposite).

Despite the **misleading implications on pp. 1 and 4 of the 10/5/15 PN that HRPT is cutting back rather than doing more work in and over the River**, it is clear that the Pier

55/Diller Island project would **increase water coverage and shading significantly.**

(3) Like the pilings discussed above, the barge(s) and other in-water structures would have the effect of fill, altering or eliminating aquatic functions.

(4) **The 490-acre stretch of the Hudson River estuary under HRPT's jurisdiction is a prime, productive habitat of extraordinary national importance.** Over 100 species of living marine resources use this aquatic habitat, including but not limited to endangered sturgeon species, shad, striped bass, sea bass, bluefish, summer and winter flounder, weakfish, perch, mackerel, menhaden and other herring, anchovy, cunner (tautog), scup (porgy), hake, eel, and such crustaceans as blue crabs. Sea turtles (including endangered Kemps ridley, Green and Loggerhead turtles and vulnerable Leatherbacks); marine mammals (including harbor porpoises and harbor seals) and seabirds also frequent these waters. They are part of the astonishingly complex food webs and ecosystems which the federal Clean Water Act was designed to protect.

Once second only to the Chesapeake system for sustaining valuable fisheries from Canada to the Carolinas up and down the Atlantic Coast, the Hudson River system may now be at least as important a contributor to dozens of fisheries of great commercial and recreational value in the Hudson River and along the East Coast. Some of the migratory species sustained by the nearshore open water (i.e. non-wetland) habitat in the River have been shown in federal litigation and in many publicly funded studies to be **unlikely to survive** if their essential habitat is filled in with columnular pilings to support development sites like Pier 55/Diller Island; or if their migration routes are obstructed; or if their habitats are altered or eliminated in other ways for projects that don't belong in the water and do not need to be there.

**Nearshore open water (i.e. non-wetland) habitats are especially important because they are generally the most productive.** Nearshore open water habitats in the lower Hudson have been found to be far more productive than the swift, cold channel in the center of the River between New York and New Jersey. A huge 200-pound mature sturgeon may be strong enough to travel down the center of the River, but many different species of smaller, more fragile fish (not to mention younger endangered sturgeon) are found closer to the shore. (It is important to note that much of the irreplaceable nearshore open water habitat that is threatened by HRPT's planned upcoming buildout is still open water today.)

The species that use a particular aquatic habitat are there because that habitat provides them with things they need--**water**, to start with, and enough room for fish to swim in; and whatever food, dissolved oxygen, water temperature, salinity, currents or other habitat features fish or other living marine resources need at a particular stage of their life cycle. Migratory species like striped bass also need to find what they need at a particular stage of their life cycles **at particular locations** along their migratory paths. Eliminating open water habitat along such a migratory path can destroy a species. So can altering the habitat features they need.

**The stripers.** One of the best illustrations of the way the aquatic resources in the River function came out in the course of several Westway trials before U.S. District Judge Thomas Griesa. Fragile young striped bass spawned on the New York side of the Hudson River north of



Poughkeepsie swim down the river to a very limited nearshore nursery habitat off of Manhattan's West Side. Fragile young-of-the-year and yearlings spend the first two winters of their lives in this nursery habitat in overwhelming numbers. This is a critical stage in their life cycle when young stripers are so fragile that up to 99% of them may die.

While some of the survivors remain in the Hudson River, most migrate up and down the Atlantic coast from Canada to the Carolinas. They grow big and strong, and rid themselves of PCB's. Many are caught by commercial and recreational anglers, who prize them. The females swim back to the Hudson north of Poughkeepsie to spawn again after they reach maturity. This astonishing natural cycle has almost certainly been going on for millions of years. It can sustain itself and renew itself forever--if (and only if) man leaves the open water habitat that now exists in the lower Hudson's nearshore waters alone.

If, on the other hand, those stripers find that their essential nursery habitat in the lower Hudson's nearshore waters has been eliminated, then the number of stripers that survive their first two winters may be so decimated that the entire striped bass fishery from Canada to the Carolinas is placed at risk. If Pier 55/Diller Island fills in even more of this limited open-water nursery habitat with a forest of new pilings, it will eliminate more and more of the water column, create barriers to fish migration, and block light in and over these waters. Then the millions and millions of fragile young stripers that are used to converging on this limited habitat every winter won't even be able to wedge themselves in, much less get the food and whatever else they need to find in this particular habitat in order to survive.

As detailed in Judge Griesa's superb decisions in *Sierra Club, Clean Air Campaign, Friends of the Earth et al. v. U.S. Army Corps of Engineers et al.*, consultants falsely claimed that "the fish would go elsewhere" if the Westway habitat were destroyed. But federal experts analyzed the data objectively and showed that that claim just wasn't true. Preserving the limited and unique habitat where juvenile striped bass had been found in overwhelming numbers in reliable sampling studies was the only way to insure the survival of striped bass all along the East Coast.

The full buildout of even just the project HRPT is already trying to complete in the River--the one described in HRPT's current General Project Plan (GPP)--would have devastating impacts on East Coast fisheries. If the Corps allows HRPT and its lessees to keep modifying the old Big Permit in ways that keep increasing habitat-destroying intrusions into the River and water coverage and shading above it even more than HRPT's GPP called for, then the devastation will be even greater.

**VIII. Besides not complying with the 404(b)(1) Guidelines, Corps approval of either the Pier 55/Diller Island project or most of the other non-water-dependent projects HRPT and its partners are trying to site or modify in the River would be contrary to the public interest.**

**The Corps PN omits** some of the best language in 33 CFR Sec. 320.4 describing the Corps' public interest test: "(2) The [Corps will consider]...(i) The relative extent of the public and private need for the proposed structure or work: (ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective

of the proposed structure or work...."

There is no need for yet another performance space in New York City, much less one that would be subsidized with at least \$36 million of taxpayers' money, and probably far, far more. As for the "unresolved conflicts as to resource use," such resources include not only the River habitat and its living resources, but public funds as well. HRPT has misspent roughly half a billion dollars already, including disaster recovery funds, in order to keep rebuilding sites in the disaster-prone location in the River. Such public resources could be reallocated to essential public purposes--such as the more than 5,000 upland parks, many in "underserved areas" and starved for public funding--if the Corps denies the requested authorization.

As to some of the other public interest factors listed on page 1 of the 10/5/15 PN:

\* "Aesthetics": **views of open water are treasured** by harried New Yorkers who use the genuine park or bikeway along the River, or live or work in buildings as far east as Fifth Avenue that have open river views. The same Corps action that's needed to preserve the physical integrity of the habitat in the River would also preserve invaluable river views.

\* "Navigation": **The River is a navigable public waterway used in Interstate and foreign commerce.** The Pier 55/Diller Island project would create obstructions to navigation.

\* "Safety" and "flood hazards": as discussed in part above, authorizing more sites for non-water-dependent uses out in the River would be a ruinous **disaster prevention and public safety protection policy.**

HRPT and its contractors sometimes argue that they will build projects like Pier 55/Diller Island extra-tall to minimize flooding. But apart from the extra cost of elevating such misplaced new projects, areas can also be devastated by the gale-force winds and driving rains and hailstorms that can accompany storms and hurricanes. That is, not just water that rises up, but precipitation that comes down from the sky can jeopardize public safety if more is built in the River. To avoid devastation that goes well beyond flooding, there's no substitute for siting new development on the upland, in more appropriate places than in the River.

\* **Fish and wildlife values, and the needs and welfare of the people (including protein):** We have subsistence fishers in the NY-NJ region. Fish are the single most important source of affordable protein for undernourished populations throughout the world, and habitat loss and destruction is the single most important cause of declining fisheries (even more important than overfishing). Sustaining wild fish production by protecting and preserving fisheries habitats like the one in the River will become even more important than it is already as food prices rise and income inequality keeps increasing.

In short, turning the River into real estate makes no sense at all.

**IX. Request for a public hearing and the public availability of HRPT's application and other information.** Unless the Corps denies the authorization for Pier 55/Diller Island, CAC requests that the Corps (not the applicant or its partners) hold a public hearing, after relevant documents have been made available to the general public for at least 30 days after public notices of

the hearing have been not only issued but received. Such documents should include the full application that HRPT has submitted to the Corps, which we've heard is 496 pages long. All relevant material should be made easily accessible for public review well in advance of the hearing.

**X.** If any Environmental Impact Statement (EIS) process is carried out before the Corps makes upcoming decisions, it must be an **honest, objective, unbiased, full federal (not State) NEPA EIS process conducted independently by the Corps--not by the regulated entity (HRPT) or HRPT's legal, environmental or other consultants.**

In Clean Air Campaign's judgment, the Corps has more than enough information already to stop all non-essential building for non-water-dependent purposes in the River now. But if such construction isn't stopped, then a federal EIS is essential before more projects as ill-conceived and reckless as Pier 55/Diller Island are approved. HRPT's 1998 State EIS was wholly insufficient to meet federal standards under NEPA (the National Environmental Policy Act).

**XI. Congress determined** that keeping everything possible **out** of the water (instead of putting more and more **into** it) should be a fundamental Clean Water Act (CWA) goal when this great bedrock environmental law was enacted in 1972. Congress did this in part to protect the national interest in sustaining fisheries. Without aquatic habitats there can be no fisheries.

**XII. Conclusion.** The lower Hudson River habitat is rich, productive, and irreplaceable, and both that habitat and its living marine resources are miraculous gifts of nature. We ask the Corps to end the cavalier destruction of the irreplaceable resources in that habitat and preserve the River as an open, free-flowing river instead. We would appreciate a response confirming that you have received this letter, and request that you keep us informed of what actions the Corps plans to take.

Sincerely,  
Marcy Benstock  
Executive Director  
Clean Air Campaign Inc./Open Rivers Project

cc: Judith Enck, Regional Administrator, U.S. EPA  
U.S. Fish & Wildlife Service  
National Marine Fisheries Service